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RECENT CASES.

ARREST—ATTEMPT TO ESCAPE—OFFICER'S RIGHT TO KILL.—*PETRIE v. CARTWRIGHT*, 70 S. W. 297 (Ky.).—*Held*, that an officer was not justified in killing a man fleeing to escape arrest for an offense less than felony, although the officer had reasonable grounds for believing that a felony had been committed.

Where in fact a felony has not been committed an officer as well as a private person acts at his peril. *State v. Rutherford*, 9 Am. Dec. 638; *Carr v. State*, 43 Ark. 99; *Lacy v. State*, 7 Tex. App. 403. The rule is laid down otherwise in *State v. Evans*, 161 Mo. 95, but the statement was *obiter dictum*. See also, *State v. Underwood*, 75 Mo. 230; *Conraddy v. People*, 5 Parker (N. Y.) 234.

BANKRUPTCY—NO JURISDICTION TO ADJUDGE LUNATIC A BANKRUPT.—*IN RE JOSEPH EISENBERG*, 8 AM. B. R. 551.—*Held*, that the court has not jurisdiction to entertain the petition of a lunatic, filed by his committee, to be adjudicated a bankrupt.

This question is apparently a novel one, no controlling authorities being found. The weight of authority holds that an insane person may be adjudged a bankrupt in involuntary proceedings; *In re Pratt*, 6 B. R. 276; *Collier, Bankruptcy*, 53, and cases cited; even in opposition to wishes of guardian, *In re Weitzel*, 14 B. R. 466. But this is so only when acts of bankruptcy were committed while sane. *In re Marvin*, Fed. Cas. No. 9178. In that case, Dillon, J, says: "As to whether an insane person may on petition of himself or guardian go into voluntary proceedings, the court gives no opinion." But the requirement in that case, where acts of bankruptcy had been committed while insane, of the consent of guardian to involuntary proceedings, intimates that the Bankruptcy Act could be invoked in favor of an insane person. Such is the ruling in the English cases. *In re James*, 12 Q. B. D. 332; *In re Lee*, 23 Ch. Div. 216. In 3 *Parsons, Contracts* 461, it is stated that an insane person can take advantage of the bankruptcy law, but no authorities are cited. That a lunatic could take out a petition in a lucid interval, see *Saunders v. Mitchell*, 61 Miss. 321.

BANKRUPTCY—CONSTITUTIONAL LAW—USE IN CRIMINAL PROSECUTION OF BOOKS TAKEN BY RECEIVER.—*PEOPLE v. SIVARTS AND GREENBERG*, 8 AM. B. R. 487 (CRIM. CT. ILL.).—*Held*, that books and papers, taken possession of by a receiver, appointed by a bankruptcy court, cannot be used in a criminal prosecution against the president and director of a corporation, from whose possession or control they were taken.

This decision is not based on the provision of the Bankruptcy Act, section 7, that "no testimony given by him (the bankrupt) shall be offered in evidence against him in any criminal proceeding," but on the constitutional provisions against compelling a witness to testify against himself. The weight of authority holds such use of writings forcibly taken possession of

to be within the constitutional prohibition. *Boyd v. U. S.*, 116 U. S. 616; *U. S. v. James*, 26 L. R. A. 418. So also even when the books are voluntarily given to the receiver for a special purpose. *Blum v. State*, 51 Atl. 26. But the seizure to be within the prohibition must amount to evidence in itself. *State v. Griswold*, 67 Conn. 290. In support of the decision that the protection would extend to the president and director, see 4 *Thompson, Corp.* 3447, 3491. Following the reasoning of the courts in construing the analogous constitutional provisions, it would seem that this decision might have been based on the exemption in the Bankruptcy Act, quoted above. *Counselman v. Hitchcock*, 142 U. S. 547; *Boyd v. U. S.*, 116 U. S. 616.

BANKRUPTCY—CORPORATION CONDUCTING A LAUNDRY.—IN RE WHITE STAR LAUNDRY Co., 9 AM. B. R. 30 (Wis.).—A corporation whose sole business is that of operating and conducting a laundry is not a manufacturing, trading or mercantile corporation, within the meaning of sec. 4b of the 1898 Bankruptcy Act.

The act of 1898 is much more limited in its application to corporations than the act of 1867. The latter act was declared to apply "to all moneyed, business, or commercial corporations and joint stock companies." Sec. 5122 Rev. St. The present act is restricted to "corporations engaged principally in manufacturing, trading or mercantile pursuits." For a discussion of what pursuits come within the language of the act, and a citation of cases, see XII *Yale Law Jour.* 168.

BANKRUPTCY—PARTNERSHIP—WHEN CREDITORS MAY SHARE IN INDIVIDUAL ESTATE.—IN RE GREEN, 8 AM. B. R. 553.—After a partnership had been dissolved and the business settled up, a former partner became bankrupt. *Held*, that section 5f of the Bankruptcy Act, providing for the priority of individual over partnership claims against individual assets, does not define the rule to be followed.

This decision is directly contrary to *In re Wilcox*, 94 Fed. 84, the only other case on this point under the present act. The latter decision held that the exception to the equity rule of marshalling the assets, viz., when there are no firm assets and no solvent partner, being omitted from the act, is inapplicable. In support of this view, which is based on an exhaustive consideration of the cases and the equities involved, see *In re Marwick*, Fed. Cas. No. 9181; *Meyer v. Thornburgh*, 15 Ind. 124; *Potters Works v. Minot*, 10 Cush. 592. The weight of authority, however, seems to support the present decision. *In re Downing*, Fed. Cas. No. 4044, held that the analogous section (36) of the act of 1867, applied only when there were firm and separate assets. So also *In re Knight*, Fed. Cas. No. 7880; *Amsinck v. Bean*, 22 Wall. 395; but *contra*, *In re Litchfield*, 5 Fed. 47, which held, however, that the equity exception also applied. The present decision is in line with those of most of the States. *Smith v. Mallory's Ex'r.*, 24 Ala. 628; *Davis v. Howell*, 33 N. J. Eq. 72; *Ramsey v. Nance*, 54 Ill. 29.

BANKRUPTCY—DISCHARGE—GROUNDS FOR DENIAL.—IN RE BLALOCK, 118 FED. 679.—A petitioner in bankruptcy had made a false oath in a previous proceeding in bankruptcy. *Held*, that this was not sufficient ground for a denial of discharge.